



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 26 2009

REPLY TO THE ATTENTION OF:
AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David B. Smith
Safety, Health and Environmental Manager
Louis Dreyfus Agricultural Industries LLC
7344 State Road 15 South
Claypool, Indiana 46510

RE: Notice and Finding of Violation issued to Louis Dreyfus Agricultural
Industries LLC

Dear Mr. Smith:

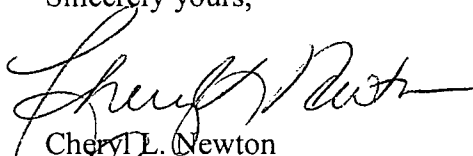
The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Louis Dreyfus Agricultural Industries LLC (Louis Dreyfus). This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA is sending this NOV/FOV to notify you that we have found that Louis Dreyfus has violated the Act at its Claypool, Indiana facility. Specifically, Louis Dreyfus has violated the Prevention of Significant Deterioration requirements of the Act, 42 U.S.C. § 7470 et seq., as well as the New Source Performance Standards, 42 U.S.C. § 7411 et seq. and the Indiana State Implementation Plan, 42 U.S.C. § 7410 et seq.

EPA is offering you an opportunity to confer with us about the violations cited in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facility into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may call Sara Breneman at (312) 886-0243 or Sarah Marshall at (312) 886-6797 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Branch Chief
Office of Air Quality /Compliance Branch
Indiana Department Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Louis Dreyfus Agricultural
Industries LLC,
Claypool, Indiana**

**Proceedings Pursuant to
Clean Air Act,
42 U.S.C. §§ 7401 et seq.**

**NOTICE OF VIOLATION and
FINDING OF VIOLATION**

EPA-5-09-IN-09

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Louis Dreyfus Agricultural Industries LLC (Louis Dreyfus) for violations of the Clean Air Act (the Act), 42 U.S.C. §§ 7401 et seq., at its Claypool, Indiana facility.

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of U.S. EPA Region 5, and redelegated to the Director, Air and Radiation Division.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. On June 19, 1978, EPA promulgated regulations pursuant to Part C of Title I of the Act, 43 Fed. Reg. 26403 (June 19, 1978).

2. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary National Ambient Air Quality Standards (NAAQS) in the State.

3. Section 110(a)(2) and Parts C and D of Title I of the Act, 42 U.S.C. § 7410(a)(2) and 42 U.S.C. §§ 7470-7515, require preconstruction review and permitting for modification of stationary sources. Pursuant to the applicable regulations at 40 C.F.R. §§ 52.21 and 52.24, if a major stationary source is planning to make one or more major modifications, then that source must obtain either a Prevention of Significant Deterioration (PSD) permit or a non-attainment New Source Review (NSR) permit, depending on whether the source is located in an attainment or non-attainment area.

4. Under Section 110(a) of the Act, 42 U.S.C. § 7410, each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. These plans are required to include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

5. In the Indiana State Implementation Plan (SIP), the current PSD provisions can be found at 326 Indiana Administrative Code (IAC) 2-2 and incorporate the Federal PSD requirements.

6. The PSD regulations at 40 C.F.R § 52.21(b)(1)(i)(a), define "major stationary source" as "any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated New Source Review (NSR) pollutant: . . . chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140)"

7. The PSD regulations at 40 C.F.R § 52.21(b)(1)(i)(b), define "major stationary source" as "notwithstanding the stationary source size specified in the paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant."

New Source Performance Standards

8. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the New Source Performance Standards (NSPS) "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006," codified at 40 C.F.R Part 60, Subpart VV. The NSPS Subpart VV is incorporated by reference into the Indiana SIP as 326 IAC 12.

9. The NSPS, Subpart VV, 40 C.F.R § 60.480(a)(1), applies to affected facilities in the synthetic organic chemicals manufacturing industry.

10. Under 40 C.F.R § 60.480(a)(2), the group of all equipment within a process unit is an affected facility.

11. Equipment is defined at 40 C.F.R. § 60.481 as "each pump, pressure relief device, sampling connection system, open-ended valve or line, valve, flange or other connector in VOC service and any devices or systems required by this subpart."

12. The NSPS, Subpart VV provides at 40 C.F.R § 60.482-1 that each owner or operator subject to the provisions of the subpart shall demonstrate compliance with the requirements of 40 C.F.R. §§ 60.482-1 through 60.482-10 or 40 C.F.R. § 60.480(e) for all equipment within 180 days of initial start-up.

Title V Requirements

13. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. See 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

14. U.S. EPA promulgated full approval of the Indiana Title V program on December 4, 2001. See 66 Fed. Reg. 629469. Final interim approval was promulgated on November 14, 1995. See 60 Fed. Reg. 57188. Indiana's Title V program became effective on December 14, 1995. Indiana's Title V program is codified at 326 IAC 2-7.

15. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

16. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.

17. 40 C.F.R. § 70.1(b), 35 IAC 201, and 326 IAC 2-7-2, provide that: "[a]ll sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements."

18. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) [a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ."

19. 40 C.F.R. § 70.7(b), 35 IAC 201, and 326 IAC 2-7-2, provide that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.

B. FACTUAL BACKGROUND

20. Louis Dreyfus is a French corporation authorized to do business in Indiana.

21. Louis Dreyfus is a "person" as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

22. The Louis Dreyfus facility is a biodiesel plant located in Claypool, Indiana (the facility).

23. The facility has a potential to emit greater than 100 tons per year of volatile organic compounds (VOC) and particulate matter (PM).

24. Louis Dreyfus applied for a Title V Operating Permit on May 18, 2005. The application was for construction and operation of a refined bleached soybean oil, soybean salad oil, soybean meal, and biodiesel manufacturing plant. The application proposed to limit the facility to 247.8 tons per year of VOC, in order to remain below the PSD major source threshold of 250 tons per year for sources not listed in 40 C.F.R. § 52.21(b)(1)(i)(a).

25. Louis Dreyfus's Title V Operating Permit application assumed that the primary process at the facility would be oilseed extraction for the manufacture of refined soybean oil, salad oil and biodiesel as final products.

26. Oilseed extraction facilities are subject to the 250 tons per year threshold for sources not listed in 40 C.F.R. § 52.21(b)(1)(i)(a).

27. Biodiesel manufacturing facilities are chemical process plants subject to the 100 tons per year threshold as outlined in 40 C.F.R. § 52.21(b)(1)(i)(a).

28. Crude soybean oil from the oilseed extraction process may be used to produce biodiesel.

29. The Indiana Department of Environmental Management (IDEM) issued a Title V permit to the facility on January 24, 2006.

30. As permitted, the primary process at the facility is oilseed extraction for the manufacture of refined soybean oil, or salad oil and biodiesel as final products.

31. As permitted, Louis Dreyfus may use some of the extracted soybean oil to make biodiesel. However, the total facility was not permitted as a biodiesel manufacturing plant.

32. The facility began operating in two phases, with the soybean preparation and extraction operations starting up on November 30, 2007, and the biodiesel operation starting up on February 7, 2008.

33. As of August 18, 2008, Louis Dreyfus manufactured only biodiesel as a final product.

34. The oilseed extraction process has not been used to produce refined bleached soybean oil or salad oil as a final product.

35. The oilseed extraction process has been used only to generate crude soybean oil for use in the biodiesel process.

36. At the facility, Louis Dreyfus has pumps, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges or other connectors in VOC service.

37. Condition D.4.13 of Louis Dreyfus' Title V Operating Permit states:

[p]ursuant to [40] CFR Part 60, Subpart VV, the Permittee shall comply with the provisions of 40 CFR Part 60, Subpart VV, which are incorporated by reference as 326 IAC 12, for the biodiesel process as follows:

§ 60.480 Applicability and designation of affected facility.

(a)(1) The provisions of this subpart apply to affected facilities in the synthetic organic chemicals manufacturing industries.

(2) The group of all equipment (defined in § 60.481) with a process unit is an affected facility.

(b) Any affected facility under paragraph (a) of this section that commences construction or modification after January 5, 1981, shall be subject to the requirements of this subpart.

§ 60.482-1 Standards: General

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 60.482-1 through 60.482-10 or § 60.480(e) for all equipment within 180 days of initial start-up.

C. NOTICE AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Provisions

38. The primary product produced at the facility is biodiesel.

39. The facility is a "chemical process facility." Therefore, the facility is a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a), and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

40. The facility has a potential to emit greater than 100 tons per year of VOC and PM.

41. The facility is located in Kosciusko County which was an area classified as attainment or unclassifiable for PM and VOC for all time periods relevant to the violations cited herein.

42. Louis Dreyfus' failure to obtain the proper PSD permit as required by 40 C.F.R. § 52.21 and 326 IAC 2-3 of the Indiana SIP, for emitting, and having the potential to emit, over 100 tons per year of VOC and PM, is in violation of Sections 110 and 169(1) of the Act, 42 U.S.C. §§ 7410 and 7479(1), 40 C.F.R. § 52.21(b)(1)(i)(a), and the Indiana SIP.

43. The violation exists from the date of the start of construction and continues until the appropriate PSD permit is obtained and the necessary pollution control equipment is installed and operated.

Violations of the Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

44. At the facility, Louis Dreyfus has affected facilities in the synthetic organic chemical manufacturing industry.

45. Louis Dreyfus has equipment as defined in NSPS, Subpart VV, 40 C.F.R. § 60.481, and the group of all equipment within a process unit is an affected facility.

46. The facility is subject to the requirements of the NSPS, Subpart VV.

47. Louis Dreyfus was required to demonstrate compliance with the requirements of the NSPS, Subpart VV, within 180 days of initial start-up, or by August 5, 2008.

48. As of August 18, 2008, Louis Dreyfus had not demonstrated compliance with the requirements of the NSPS, Subpart VV, 40 C.F.R. §§ 60.482-1 through 60.482-10 or § 60.480(e) for all equipment by not demonstrating compliance with the requirements of §§ 60.482-1 through 60.482-10 or § 60.480(e) for all equipment.

49. Louis Dreyfus failure to demonstrate compliance with the provisions of 40 C.F.R. Part 60, Subpart VV, is in violation of Section 111 of the Act, 42 U.S.C. § 7411.

Violations of the Title V Permit

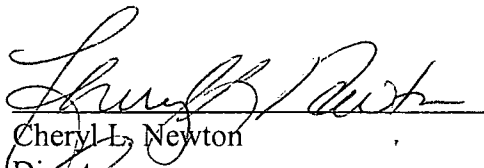
50. Louis Dreyfus' failure to comply with Condition D.4.13 of the facility's Title V Permit is in violation of Section 502 of the Act, 42 U.S.C. § 7661a.

D. ENFORCEMENT

Section 113(a) (1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule promulgated under Title I or Title V of the Act, the Administrator may issue an administrative penalty order under Section 113(d), 42 U.S.C. § 7413(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b), 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties.

Dated: 3/26/09


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

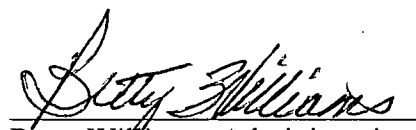
I, Betty Williams, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-09-IN-09**, by Certified Mail, Return Receipt Requested, to:

David B. Smith
Safety, Health and Environmental Manager
Louis Dreyfus Agricultural Industries LLC
7344 State Road 15 South
Claypool, Indiana 46510

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department Environmental Management
100 North Senate Avenue, Room IGCN 1003
Indianapolis, Indiana 46204-2251

On the 27th day of March, 2009


Betty Williams, Administrative
Program Assistant

Certified Mail Receipt Number: 70010320000589159891